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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 THE UNITED STATES OF AMERICA,
12
13 vs. Plaintiff,
14 DAVID MEDNANSKY, MARTINE
15 MEDNANSKY, individually,
16 Defendant.

CASE NO. 10cv1307-LAB (BGS)

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT**

[Docket No. 6.]

17
18 On June 30, 2010, the United States filed a motion styled as a motion for summary
19 judgment (the "Motion"). In fact, the Motion does not seek complete adjudication of all
20 issues; rather, it asks the Court to issue an order of ejectment and find the Mednanskys are
21 liable for damages, but to leave the issue of the amount of damages to a later time. The
22 Motion did not specifically seek dismissal of the Mednanskys' counterclaims, though it
23 appears these will be moot if the motion is granted. The Motion is therefore a motion for
24 partial summary judgment. See Fed. R. Civ. P. 56(a).

25 After several continuances, and an order granting the Mednanskys' relief from their
26 failure to file an opposition, the Motion is now fully briefed. At the time the Mednanskys
27 failed to oppose the Motion, the hearing was vacated and the Motion deemed submitted on

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1 the papers. The Court has reviewed the briefing and has determined no hearing is
2 necessary on this Motion. See Civil Local Rule 7.1(d)(1).

3 **I. Background**

4 The Mednanskys occupy a cabin located on Lot 7 of the Pine Creek Tract in the
5 Cleveland National Forest. They previously had a permit from the U.S. Forest Service. They
6 acquired their permit and bought the cabin in 1999, but the permit expired December 31,
7 2008 and, in spite of extensions of time in which to seek renewal, has not been permanently
8 renewed.¹

9 The Mednanskys and employees of the United States were parties to two earlier
10 related actions for alleged civil rights violations. The first, *Mednansky v. Gillett*,
11 07cv1425-LAB (CAB), was dismissed on the merits. The Ninth Circuit found the appeal to
12 be frivolous, denied leave to proceed *in forma pauperis*, and summarily affirmed.
13 *Mednansky v. Metz*, 09cv1478-LAB (BGS), which was dismissed in part with prejudice and
14 in part without prejudice, is now on appeal. The order of dismissal is *Mednansky v. Metz*,
15 2010 WL 3418376 (S.D.Cal., Aug. 26, 2010). The Ninth Circuit docket for this case shows
16 nothing has been filed in the docket and no action has been taken since the appeal was
17 docketed on September 27, 2010. In *Mednansky v. Metz*, the Mednanskys sought relief
18 from the U.S. Forest Service's refusal to renew their permit, because of unresolved disputes
19 concerning conditions on the property.

20 In this action, the United States seeks an order ejecting the Mednanskys from the lot,
21 an order compelling cleanup and reclamation of the property, an order enjoining the
22 Mednanskys from using the property further, and an award of damages for the Mednanskys'
23 alleged trespass on the lot.

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26 ¹ See Opp'n to Motion, Ex. 44 (email dated June 2, 2009 from Mr. Mednansky to
27 William Metz). The letter in this exhibit discusses Metz's purported agreement that old
28 permit would be carried over one more year (*i.e.*, until December 31, 2009) on the same
terms, and that terms of a new permit after that remained to be worked out. This apparently
refers to a form letter the Forest Service sent to holders of expiring permits, which is
discussed below. In *Mednansky v. Metz*, the Court found that form letter didn't constitute
a contract. But even if it did, even that agreement expired over a year ago.

II. Legal Standards

Federal Rule of Civil Procedure 56(c) empowers the Court to enter summary judgment. Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001). A fact is material if it "might affect the outcome of the suit under governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). An issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. "Factual disputes that are irrelevant or unnecessary [are] not counted." *Id.*

The movant has the initial burden of demonstrating that there is no issue of material fact and that summary judgment is proper. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Arpin*, 261 F.3d at 919. If the movant met his or her burden, the burden then shifts to the non-movant to show that summary judgment is not appropriate. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 324 (1986).

In considering the motion, the non-movant's evidence is to be believed and all justifiable inferences are to be drawn in his or her favor. *Anderson*, 477 U.S. at 255. In this case, the United States is the moving party seeking summary adjudication of its claim for relief. As the party with the burden of persuasion at trial, the United States must establish "beyond controversy every essential element of its . . . claim." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003) (quoting W. Schwarzer, California Practice Guide: Federal Civil Procedure Before Trial § 14:124–127 (2001)). If a rational trier of fact could find in the Mednanskys' favor on these claims, summary judgment will be denied.

Inadmissible evidence is not considered when ruling on a motion for summary judgment. *See* Fed. R. Civ. P. 56(e); *Beyene v. Coleman Sec. Services, Inc.*, 854 F.2d 1179, 1181–82 (9th Cir. 1988). Nor may a party resist summary judgment by relying on mere allegations or denials of the moving party's evidence. *Anderson*, 477 U.S. at 248.

1 III. Eviction Claim

2 There is no dispute that the special use permit under which the Mednanskys were
 3 permitted to occupy the lot has expired,² and that they are still occupying the cabin on that
 4 lot. Under the permit, the Mednanskys were required to pay an annual fee, to be determined
 5 by assessments. A copy of the permit is attached as Exhibit 1 to the Motion. The
 6 Mednanskys rely on this document as well, and don't question its authenticity. They agree
 7 they signed this permit and that it constitutes a contract (see Opp'n to Motion, 1:6 (describing
 8 the permit as "a binding contract")), but argue that they are not bound by all its terms, and
 9 were not in violation of the terms they consider valid. In their counterclaim they seek its
 10 renewal for a term of 20 years, and other relief to help them continue occupying the property.

11 The Mednanskys' defenses focus on whether the United States, through its officials,
 12 was right to refuse to renew the permit.

13 A. Whether All Terms of the Permit Are Binding

14 1. The Alleged Oral Agreement

15 The Mednanskys argue that in 1999, they discussed with a U.S. Forest Service
 16 representative Rich Tobin what the terms of the permit would be. They argue that this
 17 constituted a valid oral agreement. (Opp'n to Motion, 3:16–17; 21:10–20.) The evidence
 18 submitted in support of this argument consists of Mr. Mednansky's declaration (*Id.*,
 19 Document number 26-2.) The Mednanskys also point to a complaint letter written by Mr.
 20 Mednansky in January, 2001 saying what he thought Tobin had told him. (Opp'n, 3:17–22
 21 (citing Ex. 6).)

22 The Mednanskys allege they closed escrow, relying solely on Tobin's representations
 23 in reaching their decision to buy the cabin from its previous private owners. (*Id.*, 3:22–24.)

24
 25 ² In earlier litigation, the special use permit wasn't submitted to the Court, and the
 26 Court accepted the Mednanskys' representation that they had leased the property for 20
 27 years. See *Mednansky v. U.S.D.A. Forest Service Employees*, 2008 WL 4482498 at *1
 28 (S.D.Cal., Sept. 30, 2008). Pleadings from both parties in *Mednansky v. Metz* and this
 action confirm that the Mednanskys actually held a special use permit and that its terms
 provided that it would expire on December 31, 2008. Apparently what the Mednanskys
 mean by "20 year permit" is that even though the special use permit expired at the end of
 2008, it could be renewed for another 20 years. (See Opp'n, ¶ 27 ("On December 5, 2008,
 Defendants contacted [Metz] . . . regarding renewal of their 20-year permit."))

1 They argue that they didn't receive the written permit until March, 2000, although they
2 requested it repeatedly. (*Id.*, 4:1–2.) When they examined it, they allege they saw it
3 contained terms contrary to what Tobin had represented. (*Id.*, 4:2–4.) They say they
4 protested to Tobin, but signed the permit anyway, believing that if they did not, they would
5 lose their investment. (*Id.*, 4:4–7.) They now argue that they are not bound by terms in the
6 permit that conflict with what Tobin told them.

7 Mr. Mednansky's declaration identifies only one specific representation made by
8 Tobin, pertaining to whether the cabin could be used as a full-time residence. (Document
9 number 26-2, ¶ 1.) Other than this, he just mentions "representations regarding the terms
10 of the Special Use Permit" without saying what those representations were. (*Id.*) Even
11 assuming the written permit could be modified by an earlier oral agreement, this vague
12 declaration doesn't create a triable issue of fact about the terms of that agreement, or even
13 whether there was such an agreement.

14 The letter says Tobin gave them reason to believe the lot wouldn't be inspected more
15 than once per year, and they would be allowed to use the cabin as their full-time residence,
16 as long as they had another residence available to them. The letter isn't admissible as
17 evidence against the Forest Service, but even if it were, it undercuts the Mednanskys'
18 argument. It says Tobin told Mr. Mednansky over the phone there wasn't a "rule book . . . for
19 the buyers of the cabins,"³ and that Mednansky "was verbally, over the phone, given the
20 rules governing ownership." (Opp'n, Ex. 6.) The rules, the letter says, were "very informal
21 and essentially minimal in content." (*Id.*) It also mentions "various repairs and upgrades"
22 to the cabin that Tobin allegedly told Mr. Mednansky he would be able to do. (*Id.*) These
23 repairs and upgrades are unidentified, but it is clear they didn't include replacing destroyed
24 buildings (a point Mr. Mednansky later disputed). (*Id.*) This account contradicts the

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26 ³ The letter goes on to say Mr. Mednansky later found out there was a rule book, and
27 Tobin sent him some photocopied pages from it on February 10, 2000. It's not clear what
28 this rule book was. The Opposition's Exhibit 1 consists of an inspection report dated
December 14, 1999, and some typewritten pages from a booklet are attached, so this may
be what the letter refers to. But those pages just include general advice and guidance,
accompanied by graphic illustrations, and they identify themselves as "guidelines." (Ex. 1
at 8.) They don't purport to constitute part of a contract.

1 Mednanskys' current position that they thought at the time they had entered into an oral
2 contract with Tobin.

3 Furthermore, accepting Mr. Mednansky's report as true, and assuming such a
4 contract were even enforceable, important elements of contract formation are missing, such
5 as a manifestation of mutual assent, and consideration or an exchange of promises. See
6 Restatement (Second) Contracts, §§ 17, 18; *Steinberg v. United States*, 90 Fed.Cl. 435, 444
7 (Fed. Cl. 2009). Though the Mednanskys allege they considered Tobin's representations
8 to constitute a binding oral contract (Opp'n, 3:16–17), their belief doesn't make it so. See
9 *Solid Host, NL v. Namecheap, Inc.*, 652 F. Supp. 2d 1092, 1110 (C.D.Cal., 2009) (declining
10 to accept "legal conclusions cast as factual allegations" (citing *Bell Atlantic v. Twombly*, 550
11 U.S. 544, 127 S.Ct. 1955, 1965 (2007))).

12 There is also no evidence that Ms. Mednansky was a party to this conversation. Mr.
13 Mednansky describes it as a conversation between himself and Tobin. Although the
14 Opposition references Ms. Mednansky's "declaration," no such declaration is attached.
15 Rather, what appears to be intended as her declaration is a typewritten, unsigned, undated,
16 and unattested-to timeline of events bearing a title saying they were prepared for the benefit
17 of Ms. Mednansky's psychologist. The timeline is written in summary and conclusory fashion
18 (e.g., "Verbal contract led us to believe we will have privacy and independence (only once
19 a year inspection) as well as an acceptable level of rules, regulations, and risks.") (Opp'n,
20 Document number 26-1 at 1.) Though the Mednanskys have also attached a copy of Ms.
21 Mednansky's psychological diagnosis, there is no showing this timeline was submitted for
22 that diagnosis, and it is inadmissible if offered by the Mednanskys. Most of the remarks give
23 no indication whether they were based on Ms. Mednansky's personal knowledge. To the
24 degree it might be admissible under Fed. R. Evid. 803(4) if foundation were provided, it only
25 serves to show Ms. Mednansky's perceptions, not the legal assertions embodied in it.

26 Even if the conversation with Tobin had created an oral contract, the signing of a new,
27 conflicting written agreement would have effectively repudiated that agreement. The law
28 doesn't countenance the reformation or partial rescission theory suggested by the

1 Mednanskys. Even if the Mednanskys thought they had an oral contract with the Forest
 2 Service in 1999, they knew as of no later than March 1, 2000 (the date they signed the
 3 written permit) that the Forest Service had repudiated that agreement and presented them
 4 with a new one. Their remedy, assuming they had one, would have been, within the
 5 limitations period, to sue the Forest Service in the U.S. Court of Claims for breach of
 6 contract,⁴ or to sue Tobin for misrepresenting facts or violating his duty to them in other
 7 ways.⁵ The course of action they chose — signing the new agreement, accepting benefits
 8 under it, and only years later, after it expired, challenging its validity — did not preserve any
 9 rights they may have had.

10 Even assuming an oral agreement of the type the Mednanskys allege could modify
 11 the later written agreement, or be enforceable against the United States, no such contract
 12 existed. There is no triable issue of fact on this point.

13 2. Duress

14 The Mednanskys also argue they didn't consent to the written permit at all, because
 15 they signed under duress. But what the Mednanskys have described was not duress. The
 16 factual allegations don't show Tobin intended for them to close escrow without having seen
 17 the terms of the permit. That they did so, and then found themselves in a predicament
 18 afterwards, does not amount to coercion or duress. There are no allegations, much less
 19

20 ⁴ Had they brought such a claim, the Forest Service could have raised defenses such
 21 as the statute of frauds or parol evidence rule. The Forest Service might also have produced
 22 the testimony of Tobin concerning what he said. And the Forest Service might also have
 23 pointed out Martine Mednansky wasn't a party to that conversation. Even assuming these
 24 oral remarks constituted a valid contract for a long-term interest in land, the Forest Service
 anticipatorily breached that contract by presenting the Mednanskys with a new written
 agreement, and making clear the oral agreement with contradictory terms would not be
 honored.

25 ⁵ The Mednanskys argue Tobin had a duty to fully inform them of the terms of the
 26 permit before they bought the improvements, and to hold a conference attended by the
 27 Mednanskys, the Forest Service, and the prospective sellers. (Opp'n, 21:14–20 (citing
 28 Forest Service Manual's discussion of responsibility of its personnel towards permit
 applicants); Ex. 6 (letter of January 18, 2001 complaining that Tobin hadn't held a meeting
 between the seller, potential buyer, and Forest Service representative to explain rules
 governing ownership and use of the property).) It is not clear this is true. Under Section
 VII.D of the current permit, for example, the seller (not the Forest Service) is responsible for
 providing prospective buyers with a copy of the special use permit before finalizing the sale.

1 evidence, that Tobin pressured the Mednanskys to sign the permit. And even if there were
 2 duress, it would merely render the contract voidable by prompt disaffirmance, not void and
 3 subject to challenge years later. *Barnette v. Wells Fargo Nevada Nat'l Bank of S.F.*, 270
 4 U.S. 438, 444 (1926).

5 The United States points out another fundamental problem with this argument, which
 6 is that the permit either is a binding agreement or it isn't. If the permit was never validly
 7 entered into, the Mednanskys never had a valid agreement and have been in trespass since
 8 2000. What is more, they could not now enforce its terms, as they attempt to do elsewhere
 9 in their Opposition.

10 **B. Expiration of the Permit Term**

11 Even if the Mednanskys' legal arguments about the permit's real terms were correct,
 12 the permit by its own terms expired on December 31, 2008. (Motion, Ex. 1 at 2, § I.3.) The
 13 Mednanskys have presented no evidence they were told it had a longer term,⁶ or would
 14 expire upon the occurrence of some other event. It is undisputed the Mednanskys knew
 15 they were only entitled to use the cabin until December 31, 2008 under the terms of the
 16 permit, and they haven't shown that any earlier agreement or reasonable interpretation of
 17 the permit would require a longer term. And in any event, when they signed the permit on
 18 March 1, 2000, they knew it would expire at the end of 2008.

19 **C. Whether the Mednanskys Had an Enforceable Right to Renewal**

20 The permit in fact makes clear it might not be renewed after it expired. (Mot., Ex. 1
 21 at 6–7, § IX, "Issuance of a New Permit.") For example, issuance of a new permit requires
 22 a "determination of consistency with the Forest Land and Resource Management Plan" and
 23 the new permit is required to include "terms, conditions, and special stipulations that reflect
 24 new requirements imposed by current Federal and State land use plans, laws, regulations,
 25

26 ⁶ The Mednanskys represent Tobin told them they "qualified" for a 20-year Special
 27 Use Permit. (Opp'n at 3:15–16.) Even if this representation constituted evidence, they
 28 haven't alleged or argued Tobin promised they would get such a permit, or that it would
 remain in force for 20 years with no other conditions attached. Furthermore, the
 Mednanskys' own exhibits from that time, while they raise many other complaints, don't
 mention any objection to the permit's term. (See, e.g., Opp'n, Ex. 6.)

1 or other management decisions.” (*Id.*, § IX.A and B.) Specifically, the permit requires a
2 project analysis of the property in order to determine whether the lot can continue to be used
3 as a recreation residence. (*Id.*, § IX.A.2.a.) The Mednanskys’ own evidence makes clear
4 Forest Service employees reviewed the property and told them changes would need to be
5 made before a new permit could be issued. The Mednanskys don’t dispute that they
6 rejected the Forest Service’s new conditions; instead, they argue the Forest Service’s
7 conditions were unreasonable.

8 **1. Reasonableness of Denial of Renewal**

9 The Mednanskys rely in part on the Forest Service Manual and Handbook. The
10 Manual and Handbook, however, are not federal regulations, and do not have the force of
11 law. *Western Radio Servs Co., Inc. v. Espy*, 79 F.3d 896, 901 (9th Cir. 1996). They do not
12 bind the agency and litigants cannot rely on them when litigating against the Forest Service.
13 *Forest Guardians v. Animal & Plant Health Inspection Serv.*, 309 F.3d 1141, 1143 (9th Cir.
14 2002); *see also Thompson v. Smith*, 2008 WL 1734495, *4 n.1 (E.D.Cal., Apr. 11, 2008)
15 (citing cases where agency manuals were held not to confer substantive rights and were not
16 binding on the government). Rather, they serve as guidelines for the Forest Service in its
17 exercise of discretion. *Western Radio*, 79 F.3d at 901. And because the Forest Service was
18 allowed to base its decision on a variety of factors, including the broad “other management
19 decisions,” a showing that the decision was in tension with guidelines in the handbook or
20 manual wouldn’t help the Mednanskys.

21 The Mednanskys also argue the Forest Service made an unreasonable decision
22 based on the facts. This argument was the subject of litigation in the related *Mednansky v.*
23 *Metz*, and was analyzed there, where the Court found Forest Service officials were entitled
24 to qualified immunity because their decisions and actions weren’t unreasonable. The
25 Mednanskys now bring new evidence they didn’t submit in the related case, in an effort to
26 relitigate the question of whether the denial was reasonable.

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1 **a. Previously Considered Facts**

2 The Court's analysis of the facts and law is largely the same as in the earlier case.
3 See 2010 WL 3418376 at *1–*2. These are repeated only briefly here.

4 On November 20, 2008, Ranger Owen Martin sent a notice of noncompliance telling
5 the Mednanskys they needed to obtain a new recreation residence permit.⁷ It identified
6 violations of the special use permit's terms and conditions:

- 7 1. An unauthorized rock wall on each side of the cabin⁸
- 8 2. A vehicle stored next to the garage
- 9 3. An unauthorized outhouse
- 10 4. Unauthorized construction of footings, filled with cement and rebar
- 11 5. An unauthorized shed
- 12 6. A rope or chain improperly attached to trees.

13 The letter pointed out the first four violations had been identified during the previous year's
14 inspections. It directed the Mednanskys to correct all the conditions and call to initiate a
15 reinspection. Assuming all identified violations were corrected, the letter said a new 20 year
16 recreation residence special use permit would be issued. The letter also told the
17 Mednanskys, if they could not meet the deadline but were working in good faith to comply,
18 that they could be issued a one-year permit provided they submitted a compliance plan.

19 The Mednanskys did not directly dispute any of the identified violations until June 2,
20 2009, when Mr. Mednansky sent Metz a letter. Mr. Mednansky didn't dispute the existence

21 ⁷ The Opposition alleges the Mednanskys never received this notice. (Opp'n,
22 16:20–21 (“Defendants were not aware of the November 20, 2008 notice issued by Owen
23 Martin and it was not posted on Defendants’ door.”) (citing Declaration of David
24 Mednansky).) This apparently means the Mednanskys didn't receive the last notice of
25 noncompliance until after June 1, 2009. (Opp'n, 16:18–20 (discussing dates of notices).)
26 But it is clear they received a copy on June 1, 2009, to which Mr. Mednansky responded in
27 a detailed email the next day. The Mednanskys attached copies of both documents to their
28 complaint in *Mednansky v. Metz*, and have attached a copy of the notice of noncompliance
to their Opposition. (*Id.*, Ex. 21.) And it is likewise clear they had received similar notices
in 2004, 2005, 2006, and 2007. (Opp'n, 15:23–16:14.)

⁸ The Mednanskys maintained this was actually stacked building stone, awaiting use
in a construction project they had hoped the Forest Service would approve. Photographs
submitted by the Mednanskys in this case show rock is still piled up on the property in a wall-
like formation. (Opp'n, Ex. 48 (Document 26-9) at 26.) The United States' photographs of
the property confirm the rocks are stacked like a wall. (Motion, Ex. 20.)

1 of these conditions, except for the parked vehicle. Rather, he argued the Forest Service's
2 identification of them as violations was wrong, and nothing needed to be changed. The
3 parties agree the Mednanskys never worked with the Forest Service to develop a
4 compliance plan, and still haven't made the changes the Forest Service told them were
5 needed.

6 As detailed in the Court's order of dismissal in *Mednansky v. Metz*, see 2010 WL
7 3418376 at *3–*5, this interchange was followed by negotiations and communications
8 between the Forest Service and Mr. Mednansky. The Forest Service altered its view
9 somewhat, mitigating its request for removal of the vehicle and outhouse, and agreeing to
10 short-term permit extensions if the Mednanskys would begin to bring the property into
11 compliance with the Forest Service's requirements. Citing the unreasonableness of the
12 compliance demands, the Mednanskys rebuffed the Forest Service's offers. In the end, the
13 permit was not renewed.

14 As the Court found in *Mednansky v. Metz*, Forest Service officials' determinations,
15 even assuming they were wrong, weren't unreasonable. The same is true here, even
16 considering all the Mednanskys' evidence. The Mednanskys don't dispute that building
17 materials are stacked on the property; that foundations have been dug and poured, covering
18 the rebar footings intended for a building never authorized; that they replaced a shed without
19 prior approval; or that an old, disused outhouse on the property has not been removed.
20 (Opp'n, 1:13–2:6; 15:23–4 (citing Plaintiffs' Exs. 6–17).) Rather, they argue these are
21 allowed under the permit.

22 As an administrative agency, the Forest Service is entitled to deference in interpreting
23 and applying its own regulations and standards. See *Chevron, U.S.A. v. Natural Resources*
24 *Defense Council, Inc.*, 467 U.S. 837, 844 (1984).⁹ In particular, the Forest Service is entitled
25 to deference when making decisions about the renewal of special use permits. *Ness*

27 ⁹ To be clear, the Court is not deferring to the Forest Service's policies. See *Sacora*
28 *v. Thomas*, 628 F.3d 1059, 1066 (9th Cir. 2010) (holding that agency's internal policies were
entitled to a measure of deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944),
rather than full *Chevron* deference). Here, the Forest Service is interpreting and applying
applying duly adopted regulations, not merely its own policies.

1 *Investment Corp. v. U.S. Dept. of Agriculture, Forest Serv.*, 512 F.2d 706, 716 (9th Cir. 1975)
 2 (“The federal courts have no such expertise, nor . . . do the courts have any standards by
 3 which acceptance or rejection of a particular applicant could be tested Congress did not
 4 intend for the federal courts to redetermine the question.”) (citing *Hi-Ridge Lumber Co. v.*
 5 *United States*, 443 F.2d 452 (9th Cir. 1971)).

6 By way of example, the Forest Service has expertise to determine whether the
 7 Mednanskys should be allowed to construct or expand buildings on the property, should be
 8 prohibited from keeping building materials stacked on the property, or should be required to
 9 remove a tree deemed unsafe. Under the permit, and under law, the Forest Service has
 10 discretion to decide these matters. This Court lacks both expertise and any manageable
 11 standards under which to review such decisions. In circumstances such as this, the Court
 12 is not permitted to second-guess the Forest Service’s determinations about how national
 13 forest land should best be managed. Agency decisions may be reviewable under
 14 appropriate statutes, but any decision with a rational basis will normally be upheld. See
 15 *Skranak v. Castenada*, 425 F.3d 1213, 1219 (9th Cir. 2005).

16 The Court adopts the same reasoning as it did in its order of dismissal in *Mednansky*
 17 *v. Metz*, at least as applied to the evidence it has already considered. In *Metz*, the Court was
 18 deciding the issue of qualified immunity, and held that even if the Forest Service’s
 19 determinations were erroneous, they weren’t unreasonable. 2010 WL 3418376 at *9.

20 **b. New Evidence**

21 The Mednanskys never argued the non-renewal of their permit violated a statute or
 22 regulation, only that it was based on factual mistakes or malice.¹⁰ Much of the evidence the
 23 Mednanskys submit pertains to the strained relationship and various conflicts between them
 24 and the Forest Service or other government agencies or officers concerning access to the
 25 property or the Mednanskys’ use of national forest lands. Some of these issues are newly
 26 presented but most were litigated in the two earlier actions. That evidence isn’t relevant to

27
 28 ¹⁰ In *Mednansky v. Metz*, the Mednanskys did argue Forest Service officials were acting in retaliation for protected First Amendment activities. But this claim was dismissed, in part, because renewal was denied months before the alleged motive for retaliation ever arose.

1 show whether the Mednanskys were in violation of the terms of the permit, or whether the
 2 Forest Service was acting within its discretion by not renewing the permit. The Mednanskys
 3 have also submitted evidence in an attempt to show various disputes decided in *Mednansky*
 4 *v. Gillett* should have been decided differently. As noted, that case is now final. Those
 5 issues are therefore not subject to relitigation here.

6 The Mednanskys point to evidence that in February, 2000, they submitted plans for
 7 an addition to their cabin, and that Tobin assured the plan would be approved and that they
 8 were authorized to have building materials delivered to the property.¹¹ (Opp'n at 4, ¶ 3 (citing
 9 exhibits); see also *id.* at 15:7–9 ("Piles of rock and sand to be used when construction
 10 authorized.") (quoting 2002 inspection report).) The Mednanskys say they were surprised
 11 upon seeing the written copy of the special use permit on March 1, 2000 that something
 12 more than an oral approval was needed.¹² (*Id.*, ¶ 4.) Among other things, the U.S. Fish and
 13 Wildlife Service had to conduct a biological assessment and give its approval. (*Id.*) After
 14 much administrative wrangling, the project was not approved.¹³ (*Id.*, ¶¶ 4–6.) The
 15 Mednanskys contend they are still awaiting approval, but this is an unreasonable expectation
 16 in light of the Forest Service's many communications over the years telling them the footings,
 17 foundation, and building materials could not stay.

18 This evidence doesn't help the Mednanskys. The Forest Service didn't tell the
 19 Mednanskys they were in violation because they had building materials delivered to the
 20 property in 2000. Rather, the violation it identified was that they hadn't removed the
 21 materials long after it was clear the construction wouldn't be approved. And even accepting
 22 the Mednanskys' allegations, they at most had been told the construction would be approved

24 ¹¹ Other evidence submitted by the Mednanskys contradicts their declaration that
 25 Tobin had already approved the construction. (See, e.g., Ex. 6 (letter of January 18, 2001
 26 from Mr. Mednansky to Nelson Dean) ("I informed you that I had requested approval to
 undertake construction activities from Rich Tobin but had not heard from him for 6 months."))

27 ¹² Section III of the permit requires approval both by an authorized officer and a
 licensed professional approved by the Forest Service.

28 ¹³ The Mednanskys also maintain it was never denied, either. (Opp'n, ¶ 6.) That said,
 dealings between the Mednanskys and the Forest Service in the interim have made clear
 the project was not going to be approved.

1 in the future. They knew they hadn't yet been given approval to begin construction on
2 anything, such as by installing the footings, pouring a foundation, or building a new shed.

3 The Mednanskys also proffer evidence that they didn't receive conciliatory letters from
4 the Forest Service offering them more time and opportunities to come into compliance.
5 (Opp'n, 17:3–5.) If they didn't receive these, however, the reason was that they had decided
6 in September, 2006 to refuse all mail from the Forest Service except for permit fee invoices.¹⁴
7 (*Id.*, 16:14–17.) The Mednanskys apparently intend this evidence to help their case, but in
8 fact it has quite the opposite effect: It shows they knew the Forest Service regarded them
9 as being out of compliance, and deliberately avoided opportunities to come into compliance
10 or reach any other arrangement with the Forest Service. The fact that the Mednanskys told
11 the Forest Service they didn't want any to receive more mail (Motion, Ex. 9) makes no
12 difference; they are not entitled to forbid the Forest Service from using any reasonable and
13 legal means of communication.

14 The Mednanskys also point to evidence that other permit holders nearby committed
15 similar violations, without encountering obstacles to renewal. (Opp'n, 2:15–17.) They offer
16 this to show the identified violations weren't really violations, but were a pretext. The cited
17 evidence, however, consists of photographs of cabins and other improvements, some with
18 annotations. The annotations make vague accusations such as "He stack[s] building
19 materials around and I think they are still there." (Opp'n, Ex. 49 (Document 26-10 at 9).)
20 Other photographs point out nearby permittees have sheds, garage apartments, or fences.
21 This is irrelevant without some kind of showing that those improvements weren't authorized,
22 that the violations are as longstanding as the Mednanskys', and that they pose the same risk
23 the Mednanskys' do. Some photographs show vehicles parked outside, but even assuming
24 the vehicles are parked there frequently or permanently, they don't appear to be inoperable

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27 ¹⁴ The Mednanskys say they decided on this course of action because they thought
28 the Forest Service was retaliating against them for the Mednanskys' complaints about an
incident litigated in *Mednansky v Gillett*. They concluded that if the letters were accepted,
Ms. Mednansky would suffer anxiety and depression. (Opp'n, 16:15–17.) They don't explain
why Mr. Mednansky couldn't have opened them instead, or why the Mednanskys couldn't
have enlisted someone else to read and respond to the notices for them.

1 or otherwise troublesome. Furthermore, none of the photographs show multiple violations
2 as identified on the Mednanskys' lot.

3 As part of the same argument, the Mednanskys also cite a 1990 study showing
4 violations had occurred in national forests across the United States. Even if that were
5 admissible, it isn't pertinent because it doesn't show that permit holders across the nation
6 were similarly situated to the Mednanskys. It also doesn't show what actions were taken to
7 remedy the violations.

8 The Mednanskys say Tobin told them that although the cabins were intended as
9 recreational residences, most of the cabin owners used them as full-time residences. (Decl.
10 of David Mednansky, ¶ 1.) They say Tobin told them the Forest Service allowed this so long
11 as the owners had another place available to them, such as a room in a friend's home.
12 Section I.C of the permit provides that the cabin was only to be used for recreational
13 purposes and not as a principal place of residence, and that using it as such would be
14 grounds for revocation of the permit. But even if the Court were to accept Tobin's alleged
15 remarks as binding, the Mednanskys didn't even comply with that lenient reading of the
16 permit's terms. According the Mednanskys, they lost their only other residence (a boat), and
17 have nowhere else to live except the cabin. (Opp'n 23:5–11.)

18 The Mednanskys point to earlier inspection reports purportedly showing the inspectors
19 had no concern with certain conditions. There is no reason for believing these inspection
20 checklists would constitute a permanent finding or a "plan" as contemplated under Section
21 II of the permit, but even if they did, there is no basis for concluding the Forest Service
22 couldn't alter its judgment or that conditions couldn't change. That same permit section
23 expressly provides that the plan is to be reviewed and updated annually, taking into account
24 the obvious fact that conditions change. Under Section IX of the permit, renewal after
25 expiration also requires new determinations by the Forest Service, and requires
26 consideration of changes in the Forest Service's judgment and plans.

27 The Mednanskys also keep a chain barrier, often secured by a lock, across the road
28 to their cabin. (Decl. of David Mednansky, ¶ 7.) The November, 2008 notice tells them

1 “Remove lock from chain gate across road to cabin immediately. Forest Service must have
 2 access to area at all times. (See Special Use Permit Section III Clause A.)”¹⁵ (Opp’n, Ex.
 3 21.) This issue wasn’t litigated in *Mednansky v. Metz*, but has been raised here. The Forest
 4 Service’s position is that, while chain barriers are (or were) allowed in order to deter
 5 unauthorized parking in driveways, locking the chain would prevent needed access to deal
 6 with natural disasters or fire hazards. (De Sonia Decl. (Docket number 6-3), ¶ 8.) Mr.
 7 Mednansky’s declaration says the chain is there to deter unauthorized use of the driveway
 8 or access to the cabin by criminals. (Decl. of David Mednansky, ¶ 7.) He says it merely
 9 creates a “visual deterrent” and is removable, even though it is locked, since “authorized
 10 persons can navigate under or around the chain and the posts holding the chain are easily
 11 removed because they are not firmly secured in the ground.” (*Id.*) This evidence doesn’t
 12 alter the Court’s analysis. The Forest Service’s conclusion that the locked chain improperly
 13 blocks the driveway and creates a hazard is still reasonable and entitled to deference.

14 **2. Contractual Obligation to Renew Permit**

15 The only other possible basis on which the Forest Service could be required to renew
 16 the permit is a contractual obligation to do so.

17 **a. Whether the Permit Requires Renewal**

18 The Mednanskys argue there is a triable issue of fact as to whether the refusal of the
 19 Forest Service to renew the permit constitutes a breach of the permit itself. This argument
 20 fails because, in the absence of ambiguities, agreements such as the permit are construed
 21 as a matter of law. *Fireman’s Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 951, n.21 (9th Cir.
 22 2002). There are no ambiguities here to resolve.

23 The Mednanskys focus on Section IX.A.1 of the permit, which provides that “[w]here
 24 continued use is consistent with the Forest plan, the authorized officer shall issue a new
 25 permit, in accordance with applicable requirements for environmental documentation.”
 26 (emphasis added). The remainder of the permit, however, defeats their argument. Section

28 ¹⁵ This section of the permit provides that permission is required to build or maintain any improvement not specifically named in the permit. Examples include signs, fences, mailboxes, name plates, and sheds.

IX.A provides that decisions to issue new permits “require a determination of consistency with the Forest Land and Resource Management Plan (Forest plan).”

Section IX.B provides:

In issuing a new permit, the authorized officer shall include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64).

Here, the Forest Service has repeatedly tried to impose such requirements on the Mednanskys, which they have rejected at every turn. The permit’s citation to the regulation is pertinent because, in addition, that regulation provides:

When a special use authorization provides for renewal, the authorized officer shall renew it where such renewal is authorized by law, if the project or facility is still being used for the purpose(s) previously authorized and is being operated and maintained in accordance with all the provisions of the authorization.

36 C.F.R. § 251.64(a) (emphasis added). Because the Court must defer to the Forest Service’s decision that the property isn’t being maintained in accordance with the provisions of the permit, this regulation provides that it need not be renewed.

b. Other Written Communications

The Mednanskys have pointed to a form letter dated January 13, 2009 from Forest Supervisor William Metz with the salutation “Dear Recreation Residence Permit Holders.” (Motion, Ex. 16; Opp’n, Ex. 37.) This letter apologized to recipients for the Forest Service’s lateness in issuing permits, but assured them they wouldn’t be penalized for the Forest Service’s lateness. The letter assured recipients “you will have a legal authorization during this interim period.” (*Id.*) It also told recipients, if they hadn’t received a bill for fees, they would be receiving one shortly, and told them they would have 30 days to pay it. The letter added “We want to guarantee you that the Forest Service will continue to proceed with the execution of the new 2-year or short duration permits as well as the bills until completed.”

The Mednanskys argue this was a binding contract to renew the permit. The United States presents evidence making the obvious point, that this was a form letter automatically sent out via a mailing list. (Motion, 8:20–22 (citing Metz Decl, ¶ 3).) The United States also

1 admits sending the letter to the Mednanskys was an oversight, since they were in
2 non-compliance, and points out later correspondence with the Mednanskys made this clear.
3 (*Id.*, 8:22–9:1.) While the salutation addresses “Permit Holders,” the body of the letter
4 makes clear it is addressed to holders of expired permits. Although the Forest Service says
5 it “want[s] to guarantee” to proceed with the issuance of 20-year and short-duration permits,
6 it doesn’t guarantee to issue either of those to the recipient. Furthermore, the fact that this
7 mentions two types of permits in the alternative makes clear recipients weren’t guaranteed
8 a 20-year permit as the Mednanskys now claim.

9 The Court ruled on this issue in *Mednansky v. Metz*, and its ruling here is the same.
10 This was clearly a form letter. Even accepting the Mednanskys’ profession that they
11 interpreted it as a promise to renew their permit for 20 more years, that belief was
12 unreasonable and unfounded by the letter itself or the Mednanskys’ course of dealings with
13 the Forest Service. The Mednanskys had already been sent letters addressed to them
14 personally telling them their permit would not be renewed unless they met certain conditions,
15 including submitting a plan to remedy the violations. They knew they hadn’t complied with
16 those conditions, and knew their permit wasn’t going to be renewed. Furthermore, any
17 promise represented by this letter would be gratuitous.

18 The Mednanskys have also submitted a postcard (Opp’n, Ex. 38) addressed “Dear
19 Recreation Residence Permittee” and saying the bill for 2009 would be issued in January,
20 2009. This card isn’t even signed, and fares no better than the form letter. In addition, it is
21 postmarked December 19, 2008, when the Mednanskys’ permit was still in force and could
22 yet have been renewed if they had met the conditions.

23 In short, neither the letter nor the post card, nor the two together are enforceable as
24 a contract to renew the permit.

25 **D. Other Arguments**

26 A few remaining issues raised in the Mednanskys’ opposition have not been
27 discussed in earlier sections.

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1 The Mednanskys argue that because they invested a lot of effort in the cabin, they
2 have a vested right to it. The Mednanskys' evidence shows they did a good deal
3 of renovation and made repairs to the cabin. While this fact makes the Mednanskys'
4 situation the more unfortunate, it doesn't provide any defense.

5 The Mednanskys' Opposition properly acknowledges that special use permits don't
6 create vested property rights, however, and their appeal to state law is unavailing. (See
7 Opp'n, 23:16–24:9.) The Mednanskys knew from the start, before they even saw the written
8 permit, that they weren't buying the land and didn't have any permanent right of occupancy.
9 They also clearly knew the permit would expire at some point. Furthermore, the renovations
10 were, at least in large part, carried out after the Mednanskys had signed the permit. The
11 permit makes clear that it might not be renewed, and that it might be terminated, even if the
12 Mednanskys kept up their end of the bargain. While the Mednanskys may have hoped this
13 would be their permanent home, they knew it might not be.

14 The Mednanskys also rely on the form letter, post card, and other correspondence
15 to raise an estoppel defense. Their argument, essentially, is that they were misled into
16 believing the permit would be renewed even though they hadn't corrected the identified
17 violations. The Opposition points to an alleged failed delivery of a notice in September,
18 2006, arguing that the Mednanskys never heard anything about the permit not being
19 renewed, that Metz had assured them it would be renewed, and that they certainly would
20 have complied with the Forest Service's requirements if only they had heard about them in
21 time.¹⁶ (Opp'n, 22:15–3 ("They had no knowledge of the intent of the Forest Service to
22 refuse renewal of the permit.")) The Mednanskys also point to correspondence with Metz
23 concerning appraisals, which were to form a basis for new fees, from which they apparently
24 inferred the appraisal was the only obstacle to permit renewal.

25 This argument is frivolous. It is unsupported by any evidence; in fact, it is
26 demonstrably false, even by the Mednanskys' own selective evidence. Notices of non-

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28 ¹⁶ The Opposition has selected June 1, 2009 as the relevant "point of no return," even though the Mednanskys were actually given until June 26 to submit a plan to correct the violations.

1 compliance had been issued annually since 2004, identifying violations on the property and
2 citing the permit's "revocation for cause" provision. (Opp'n, Exs. 21, 30.) On December 5,
3 2008, the Mednanskys sent Metz an email telling him to send "legitimate correspondence
4 for Term Permit administration with us directly from your office," indicating they were
5 unhappy some type of term permit letter had been sent or delivered by Descanso district
6 staff. (*Id.*, Ex. 35.) This argument also directly contradicts the Mednanskys' own position
7 in *Mednansky v. Metz*. (See, e.g., Case 09cv1478, Complaint, Ex. A (email from Mr.
8 Mednansky to Metz, upbraiding Metz for a letter of May 12, 2009 threatening "seizure" of the
9 Mednanskys' home and property if they didn't agree to new permit terms).) And finally, even
10 accepting, *arguendo*, that the Mednanskys had no idea until June 2, 2009 the violations on
11 the property would result in non-renewal of the permit, they were given even more time after
12 that to submit a plan to bring the property into compliance (Motion, Ex. 17, 19), and refused.
13 (*Id.*, Ex. 18.)

14 Correspondence from Mr. Mednansky to Metz asking when the permit would be
15 renewed and expressing disbelief on hearing it had expired are inadmissible hearsay if
16 offered by the Mednanskys to prove they genuinely hadn't heard. See Fed. R. Evid. 803(3)
17 (statement of belief inadmissible to prove truth of matter believed). Any claim of surprise or
18 ambush is omitted from Mr. Mednansky's declaration, which merely says "We did not
19 observe a note Dated November 20, 2008 posted on our door on or around December 1,
20 2008." (Decl. of David Mednansky, ¶ 10.)

21 In short, it is beyond question the Mednanskys knew the Forest Service considered
22 them in violation of the terms of the permit; they were given extensions of time and ample
23 opportunity; and even then they refused to take the initial step of submitting a compliance
24 plan. They have no estoppel or any other equitable defense.

25 **E. Conclusion: Eviction Claim**

26 Though the Mednanskys raise a number of disputes, they are either not material or
27 not factual disputes, and this claim can be decided as a matter of law. Undisputed facts
28 show the permit expired December 31, 2008. Arguably, the Mednanskys were given leave

1 to remain on the property longer, possibly as late as June 26, 2009. But it is beyond
2 argument that extension of time has also expired. Even though the Mednanskys have
3 argued the conditions on their property aren't violations, or aren't serious violations, the
4 Forest Service's determination that they are is entitled to deference. There is no evidence
5 this was an unreasonable or irrational determination.

6 With that issue decided, it is clear the Forest Service was not required under law or
7 under the terms of the permit to renew the permit. Because the Mednanskys' permit has
8 expired and they are not entitled to renewal, they are not entitled to occupy the cabin or the
9 property. Under section X.A of the permit, at the end of the term of occupancy, or on
10 abandonment of the property, the permittee is obligated to remove all structures and
11 improvements from the property within a "reasonable time" (not to exceed 180 days from the
12 date the authorization of occupancy is ended). Under this same provision, if the permittee
13 fails to remove the improvements, they become property of the United States and the
14 permittee is liable for the cost of their removal and restoration of the lot. The United States
15 has expressed its intention to restore the property to its natural state.

16 The United States has met its initial burden of showing that there are no genuine
17 issues of material fact, and it is entitled to judgment as a matter of law. The burden
18 therefore shifts to the Mednanskys to point to specific facts showing there is a genuine issue
19 for trial. See *Celotex*, 477 U.S. at 322. The Mednanskys have raised various arguments
20 based on a purported contract and equitable doctrines. But their arguments about the
21 meaning of the permit, about the existence or effect of other purported agreements, or about
22 the law, are not "specific facts," and their allegations don't constitute evidence. The
23 evidence they have submitted either hurts their case, or is irrelevant. They have therefore
24 presented no evidence to show there is a genuine issue for trial. Because it is clear the
25 Mednanskys are not entitled to continue occupying the property, and are trespassing, the
26 United States is entitled to evict them.

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1 **IV. The Mednanskys' Liability**

2 The United States has sought summary judgment on the issue of damages for
3 trespass, and for recovery of the cost of returning the property to its natural state. The
4 Mednanskys were never sent a bill (which would imply permission to occupy the property),
5 and therefore haven't paid a fee to occupy the property since the end of 2008. The United
6 States asks for an award of a reasonable rental rate plus interest and administrative
7 penalties in amounts to be determined at trial. The United States concedes the cost of
8 removing improvements cannot be determined until removal is complete.

9 While it is clear the Mednanskys are liable for trespass, in this case damages are not
10 appropriately determined at the summary judgment stage. And while it is clear the
11 Mednanskys will be liable for the cost of returning the property to its natural state, there is
12 no way to determine at this time what that amount is. Under Section X.A of the permit, the
13 time for removal of structures or other improvements from the property has already passed,
14 so it is unclear whether the Mednanskys will make arrangements for this now, or will elect
15 to simply vacate and pay the costs of removal as provided under the same section.
16 Furthermore, issues that weren't briefed in the summary judgment motion — such as the
17 previous condition of the lot — may have some bearing on the cost.

18 Although the complaint alleges the Mednanskys have been in trespass since
19 December 31, 2008, they have a reasonable argument this date was extended at least until
20 June 26, 2009. This, too, is not amenable to resolution on the pleadings.

21 Finally, the United States has asked for an award to compensate it for the cost of
22 recovering possession of the property. The issue of whether the United States is entitled to
23 such a recovery has not been adequately briefed. And in any event, until that is
24 accomplished, there is no way to determine that amount.

25 **V. Conclusion and Order**

26 The United States' motion for partial summary judgment is **GRANTED IN PART**. The
27 United States' claim for eviction of the Mednanskys from Lot 7 of the Pine Creek Tract of the

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1 Cleveland National Forest is **GRANTED**. To the extent the United States seeks any
2 payments, the motion is **DENIED**, and these amounts remain to be determined later.

3 Counsel for the United State is directed to lodge, no later than March 18, 2011, in
4 editable electronic format, a proposed order or orders granting the relief sought in the
5 Complaint in connection with the claim for eviction. See Electronic Case Filing
6 Administrative Policies and Procedures Manual, § 2(h). These proposed orders may include
7 an order requiring the Mednanskys to vacate the property within 30 days from the date of
8 issue, a writ of execution, and an order enjoining the Mednanskys and those acting in
9 concert with them from occupying the property. The orders may be combined as
10 appropriate. The same day, the United States must file in the docket a notice attaching the
11 proposed orders as exhibits. The Mednanskys' counsel may file in the docket any objections
12 to the proposed orders no later than two court days after the notice attaching such orders
13 is posted. Objections are not to include requests for reconsideration of this ruling.

14 Because it appears the Mednanskys' counterclaims may now be moot, they are
15 **ORDERED TO SHOW CAUSE** by filing a memorandum of points and authorities, not
16 exceeding fifteen pages, no later than **May 16, 2011**. The page limit does not include any
17 attached or lodged material. The United States, if it wishes, may file a reply subject to the
18 same page limits no later than May 16, 2011. See *Council of Ins. Agents & Brokers v.*
19 *Molasky-Arman*, 522 F.3d 925, 933 (9th Cir. 2008) ("[W]e have an independent obligation
20 to address whether a case is moot because it goes to the Article III jurisdiction of this court.")
21 (citation omitted). If the Mednanskys fail to show cause within the time permitted, their
22 counterclaims will be dismissed for lack of jurisdiction.

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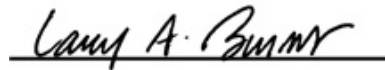
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1 If the parties wish to discuss settlement of the remaining issues, such as removal of
2 the structures or amount of fees or other payments, they are directed to contact the
3 chambers of Magistrate Bernard Skomal.

4 **IT IS SO ORDERED.**

5 DATED: March 8, 2011

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8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge
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